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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,200

12/07/2005

Uwe Brede

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

04/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/530,200		BREDE ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Gary Estremsky		3673	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Although claim 8 functionally recites the “two structural parts” indicating that they are not claimed as part of the invention. However limitation of claim 8 renders scope of claim indefinite inasmuch as the “floating disc” is “slid onto the adapter”, and it is “adjacent to the second structural part”. It’s not clear if the structural parts are claimed as part of the invention or not.

4. As best understood, the claim should be rewritten as --Fastening element according to claim 1 further comprising a floating disc slid onto the head of the fastening element, where in use it is to be located adjacent the second structural part to serve as a counter-bearing,—to *not* include the structural parts as part of the claimed invention.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3673

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 2,378,118 to Widrich.

3. Widrich '118 teaches Applicant's claim limitations including : a "metallic shell" – portion 12 defining "head portion" – including 13a as shown in Fig 6, "pyrotechnic propellant charge" – 16a, an "adapter" – 20, a "fastening means" – 11, "fracture notches" – 19.

4. As regards claim 3, inasmuch as a product claimed is defined by its structure and the reference has all the structure disclosed associated with being produced from the deep-drawing process, the limitation has not clearly defined any particular structure that might be relied upon to patentably distinguished the claimed invention from the prior art.

5. Similar consideration as above applies to claim 4.

As regards claim 5, inasmuch as one of ordinary skill in the art would recognize that prior art pyrotechnic propellant charge can inherently be ignited by a punctiform heat source, including a laser beam, the functionally-recited limitation has not defined any particular structure of the claimed invention (fastening element) that might be relied upon to patentably distinguish from the prior art. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,378,118 to Widrich in view of U.S. Pat. No. 7,008,157 to Obanion.

8. Although Widrich '118 doesn't disclose a "conical" head portion (insertion end), Obanion '157 discloses that a conical head is well known in the art. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the fastening element of Widrich '118 with a conical insertion end as taught by Obanion '157 for example in order to make its insertion easier. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not otherwise affect function of the device.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,378,118 to Widrich in view of U.S. Pat. No. 2,616,328 to Kingsmore.

10. Although Widrich '328 doesn't teach a "floating disc", Kingsmore '328 discloses that it's well known in the art to provide a "floating disc" ('4 as shown in Fig 7) in cases of fastening relatively softer structural parts such as wood. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the

time of the invention to provide the fastening element of woodrich '118 with a floating disc as taught by Kingsmore '328 to adapt it for use with attaching wood structural parts for example.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
12. U.S. Pat. No. 3,166,971 to Stoecker.
13. U.S. Pat. No. 4,909,686 to Bender.
- 14.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on T,W,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gary Estremsky  
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